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| <b>TO:</b>      | <b>CHAIR AND MEMBERS<br/>CIVIC WORKS COMMITTEE<br/>MEETING ON NOVEMBER 1, 2016</b>  |
| <b>FROM:</b>    | <b>KELLY SCHERR, P.ENG., MBA, FEC<br/>MANAGING DIRECTOR, ENVIRONMENTAL &amp;<br/>ENGINEERING SERVICES AND CITY ENGINEER</b> |
| <b>SUBJECT:</b> | <b>UTILITY-ISSUED ALTERNATE LOCATE AGREEMENTS</b>   |

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| <b>RECOMMENDATION</b> |
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That, on the recommendation of the Managing Director, Environmental & Engineering Services and City Engineer, the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting to be held on November 8<sup>th</sup>, 2016 for the purposes of delegating to the City Engineer the authority to execute utility-issued Alternate Locate Agreements on behalf of the Corporation.

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| <b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b> |
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Proposed Alternate Locate Agreement – May 10, 2016 Civic Works Committee established an approved form of a City-issued Alternate Locate Agreement.

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| <b>2015-19 STRATEGIC PLAN</b> |
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The City’s use of Alternate Locate Agreements supports the Strategic Plan of *Leading in Public Service* through innovative and supportive organizational practices.

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| <b>PURPOSE</b> |
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The previous report to the Civic Works Committee on May 10, 2016, sought approval for a standard form Alternate Locate Agreement that the City offers to utilities and contractors working in the City, and authorized the City Engineer to execute City-issued Alternate Locate Agreements on behalf of the Corporation.

This report covers the reverse situation where utility owners offer an Alternate Locate Agreement to the City acting as a contractor. The utility-sourced agreements vary from company to company and current administrative municipal protocol requires each agreement to be put forward to Council for approval for execution by By-law – an approval process that is time consuming and cumbersome for a recurring, routine agreement designed to improve operational efficiency. The purpose of this report is to seek approval to delegate to the City Engineer the authority to execute utility issued Alternate Locate Agreements on behalf of the Corporation.

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| <b>BACKGROUND</b> |
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The *Ontario Underground Infrastructure Notification System Act* requires anyone “breaking ground” to call Ontario One Call and obtain a locate of buried utilities prior to undertaking any work. Ontario One Call is responsible for creating the

locate “ticket” and for notifying utility owners so they can arrange to have their underground plant located before work can begin. Failure to obtain a locate prior to excavating can lead to utility plant damage, risks the health and safety of workers and invites charges and fines by Ministry of Labour Occupational Health and Safety Inspectors.

The time required to complete the locate can range from several days to several weeks depending on the circumstances, so contractors and City Operations staff must plan their work accordingly.

Alternate Locate Agreements (ALAs) offer an alternative to obtaining a locate prior to commencing excavation work. An ALA is a legal agreement between the excavator and a utility owner that sets out specific criteria for excavating that, when strictly adhered to, eliminates the need for a locate. Essentially, the utility owner determines the excavation method(s) that are deemed “safe” for its plant so when an excavator follows the approved excavation procedures there is little chance of plant damage occurring. This saves the excavator time by not having to wait for the locate to be completed, and saves the utility owner the cost of having to do the locate.

Alternate Locate Agreements are generally limited to shallow excavation work, hand-digging and the use of vacuum excavation equipment which are considered low-risk activities for both the utility plant and operator.

Alternate Locate Agreements are filed with Ontario One Call and are fully compliant with the *Ontario Underground Infrastructure Notification System Act* and its associated regulations. Once the ALA is filed, Ontario One Call issues a Alternate Locate ID that the contractor uses when excavating under the terms of the ALA. The contractor is still required to call Ontario One Call to obtain a valid locate “ticket” but Ontario One Call suppresses the locate notification to the utility owner. To be fully effective, contractors need to enter into ALAs with all major utility owners in the City.

DISCUSSION

City Operations staff currently call in more than 500 locates annually for many reasons including sewer and water service repairs, for example. Having an ALA with utility owners allows the City to excavate using its vacuum-excavation equipment without waiting for a locate which increases operational flexibility and improves overall efficiency for City Operations. Locate wait periods and delays due to late locates adds to scheduling difficulties, creates operational inefficiencies and impacts public service delivery, particularly in loss-of-service situations that are not considered to be emergencies under *Ontario Underground Infrastructure Notification System Act* regulations. ALAs are an important tool in the ongoing efforts to maintain high-levels of service that City Operations staff constantly strive to achieve.

The City, acting as a contractor/excavator, has previously signed ALAs offered by London Hydro and Union Gas (though the Union Gas ALA recently expired and needs to be renewed) and is pursuing ALAs from both Bell Canada and Rogers Communications. The goal is to enter into ALAs with every operating utility in London that is prepared to offer them.

Attached to this report in Appendix ‘A’ is a proposed ALA from Bell Canada, which is provided as an example of a typical ALA for a telecommunications firm. Although the terms of ALAs vary somewhat from utility to utility, they all contain similar principles:

- Sets out the specific excavation conditions and processes that must be adhered to when an excavator relies on the ALA in lieu of obtaining a proper locate
- Requires the excavator to notify Ontario One Call using the special Alternate Locate ID when excavating under the terms of the agreement
- Excavator must maintain liability insurance and indemnify the utility owner from any claims or charges resulting from the work performed
- Agreement terms typically run two years
- There is no cost to either the City operating as a contractor nor the utility owner for entering into an ALA

The terms of ALAs are straight-forward and there are no contentious issues or financial implications.

Each utility owner’s ALA will differ somewhat according to their specific operational requirements, which currently requires that agreements be submitted via standing committee report to Council for approval by By-law before being executed.

With the goal of improving administrative efficiency, and considering the routine nature of these low-risk, no-cost operational agreements and taking into account the number of operating utilities and relatively short renewal terms, it is recommended the City Engineer be empowered to execute utility-issued Alternate Locate Agreements on behalf of the Corporation, provided that the agreements are reviewed and approved by the City Solicitor.

**CONCLUSION**

Utility-sourced Alternate Locate Agreements support City Operations by improving scheduling flexibility and reducing response times for urgent repairs such as loss of water service, which goes directly to superior public service delivery. Due to the routine nature and frequency of renewal of these operational agreements it is recommended that the attached proposed By-law, delegating to the City Engineer the authority to execute ALAs on behalf of the City, subject to the approval of the City Solicitor, be approved.

**Acknowledgements**

This report was prepared by Gary Irwin (Geomatics) and reviewed by David Munteer (Legal Department).

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| <b>PREPARED BY:</b>  | <b>REVIEWED AND CONCURRED BY:</b>                                      |
|  |  |
| <b>A. GARY IRWIN, O.L.S., O.L.I.P.<br/>CHIEF SURVEYOR AND DIVISION<br/>MANAGER, GEOMATICS</b>                | <b>EDWARD SOLDI, P.ENG.<br/>DIRECTOR, ROADS AND<br/>TRANSPORTATION</b> |
| <b>RECOMMENDED BY:</b>   |  |
|  |  |
| <b>KELLY SCHERR, P.ENG., MBA, FEC<br/>MANAGING DIRECTOR<br/>ENVIRONMENTAL SERVICES AND CITY<br/>ENGINEER</b> |  |

October 14, 2016

cc: David Munteer  
Shane Maguire  
Rick Pedlow  
John Simon

Bill No. [XXX]  
2016

By-law No. [XXXX]

A By-law to delegate  
authority for executing  
Alternate Locate  
Agreements.

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

WHEREAS subsection 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the powers of a municipality under that Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their own affairs as they consider appropriate and enhance their ability to respond to municipal issues;

WHEREAS subsection 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

WHEREAS subsection 23.2(1)(c) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality;

WHEREAS subsection 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may delegate legislative and quasi-judicial powers under any Act only to an individual who is an officer, employee or agent of the municipality if the power being delegated is of a minor nature, with Council having regard to the number of people, the size of geographic area and the time period affected by an exercise of the power;

AND WHEREAS it is deemed expedient for the Municipal Council to delegate authority for Alternate Locate Agreements to the City Engineer.

NOW THEREFORE the Council of The Corporation of the City of London hereby enacts as follows:

1. The City Engineer is hereby delegated the authority to execute Alternate Locate Agreements from utility owners, subject to the approval of the City Solicitor, on behalf of The Corporation of The City of London,
2. This by-law comes into force and effect on the day it is passed.

PASSED in Open Council \_\_\_\_\_, 2016.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk

First reading –  
Second reading –  
Third Reading -

**APPENDIX ‘A’**

**Example Alternate Locate Agreement**



**ALTERNATE LOCATE AGREEMENT**

**Between:            Bell Canada**

(hereinafter referred to as “Bell”)

Contact Telephone Number in the event Bell Underground Plant is damaged or in conflict: 1-844-255-5550

**And:                The Contractor**

(hereinafter referred to as “Contractor”)

**WHEREAS:**

1. The Contractor plans to undertake excavation work from time to time as further described in Schedule “A” attached hereto.
2. The Contractor has requested Bell to provide an alternate locate for such work.
3. Bell has agreed to grant an alternate locate, solely for such work, on the terms and conditions as further described in this Agreement.

**NOW THEREFORE**, in consideration of the premises, the mutual covenants contained in this Agreement and other consideration (the receipt and sufficiency of which are acknowledged), Bell and the Contractor agree as follows:

1. The Contractor shall perform the excavation work described in Schedule “A” attached hereto (the “Allowable Work”) and use the Ontario One Call Contractor Alternate Locate ID number in accordance with the terms and conditions set forth in this Agreement, including without limitation the additional terms and conditions pertaining to the Allowable Work set out in Schedule “A”.
2. The Terms and Conditions and Schedule “A” attached hereto form part of this Agreement and are binding upon the parties hereto and shall supersede and be unaffected by all other terms and conditions made or issued by the Contractor in relation to the Allowable Work.

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| <b>Ontario One Call Contractor Alternate Locate ID #:</b> _____ |
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In Witness Where of the parties hereto have executed this Agreement.

Dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ until the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

| <b>Contractor</b> | <b>Bell Canada</b> |
|-------------------|--------------------|
| By:               | By:                |
| 1. _____          | 1. _____           |
| By:               | By:                |
| 2. _____          | 2. _____           |

## TERMS AND CONDITIONS

1. The term of this Agreement is for two (2) years, commencing on the date set out on the first page of this Agreement, subject to earlier termination in accordance with the terms of this Agreement. At the sole option, the term of this Agreement may be renewed by Bell for an additional one (1) year term by Bell by providing Contractor with written notification of such renewal.
2. This Agreement may be terminated at any time by either party upon written notice to the other party with no liability for any incurred costs to either party as a result of the termination. Upon termination or expiration of this Agreement, the Contractor shall immediately cease any excavation related to the Allowable Work and shall immediately cease, and cause all of its personnel to cease, any use of the Contractor Alternate Locate ID.
3. The Contractor represents and warrants that the Allowable Work will not have a negative impact on the underground plant or equipment owned by Bell (the "Bell Underground Plant"). This Agreement pertains only to the Bell Underground Plant, and Contractor will be required to obtain locates for all other underground plant.
4. The following terms and conditions apply to the use of the Contractor Alternate Locate ID:
  - a. Locate requests shall be made to Ontario One Call for all excavations by the Contractor.
  - b. The Contractor will be issued a contractor alternate locate ID number (the "Contractor Alternate Locate ID") by Ontario One Call which shall be referenced by the Contractor for locate requests for Allowable Work made through Ontario One Call.
  - c. Contractor will only use a Contractor Alternate Locate ID when making locate requests to Ontario One Call for Allowable Work.
  - d. Contractor shall keep and maintain and have readily available at the job site a copy of this Agreement and the applicable Ontario One Call Ticket Number from the "Notice of Intent to Excavate" form issued by Ontario One Call pertaining to Allowable Work at the job site for which Contractor has used the Contractor Alternate Locate ID.
  - e. Contractor shall ensure that all of its on-site employees are aware of the terms and requirements of this Agreement.
  - f. An Ontario One Call alternate locate confirmation is valid for the lesser of sixty (60) days from the date the request was made to Ontario One Call or as noted on the alternate locate confirmation form. If excavation work is not completed within such timeframe, the Contractor must contact Ontario One Call to register a new alternate locate request.
  - g. Bell retains the right to refuse to honour the alternate locate at any time for any reason, and may also cancel the Bell Contractor Alternate Locate ID at any time upon notice.
5. The Contractor shall request individual regular locates through Ontario One Call for all excavation work done outside the scope of the Allowable Work, or whenever requested by Bell (either directly or through Ontario One Call).
6. The Contractor Alternate Locate ID applies to the Contractor only and not to any of its subcontractors. The Contractor shall not disclose the Contractor Alternate Locate ID to any individual except for its authorized employees who require the Contractor Alternate Locate ID for the purposes of executing the Allowable Work in accordance with the terms of this Agreement.
7. All Allowable Work shall be conducted in accordance with all laws, standards, codes and guidelines applicable to the Contractor and the Allowable Work, including, without limitation, the most recent versions of each of the following:
  - a. Bell Canada Orange Book-Safe Excavation in the Vicinity Of Bell Canada's Underground Network
  - b. The Occupational Health and Safety Act (Ontario) and all regulations made thereunder including, without limitation, O. Regulation 213/91 (Construction Projects) (as each of the foregoing is amended from time to time, the "OHSA"); and
  - c. The Technical Standards and Safety Authority Act 2000 and reg.210/01.
  - d. Electrical Safety Authority and Technical Standards & Safety Authority *Guideline for Excavation in the Vicinity of Utility Lines*;

In the event of any conflict among any of the foregoing, or any other applicable laws, standards, codes or guidelines, the most stringent standard shall apply. The Contractor shall obtain any necessary consents of such governmental authorities or of any applicable third parties, in respect of their respective obligations and conduct pursuant to or in respect of this Agreement.
8. In the event any Bell Underground Plant is discovered or encountered but where there has been no damage to Bell Underground Plant or to property of any third party and no personal injury as described in Section 9, the Contractor will contact Bell immediately at the telephone number set out on the first page of this Agreement and ensure that, if required by Bell, the excavation is left open in a safe and secure manner until it has been inspected by Bell.
9. If any excavation by the Contractor results in any damage to Bell Underground Plant or property of any third party or any personal injury, the Contractor shall immediately:

- a. Cease all work within the excavation;
- b. Exclude all people and barricade the area; and
- c. Contact Bell immediately:

- i. Damaged Plant: 1-800-664-4445

- ii. Personal Injury or Property Damage: 1-800-664-4445

The Contractor shall comply with the Ontario Regional Common Ground Alliance Best Practices, 4-22: Facility Damage Notification and 4-23: Notification of Emergency Personnel, as same may be changed or amended from time to time. In the event of any conflict between the Ontario Regional Common Ground Alliance Best Practices and the terms of this Agreement, the terms of this Agreement shall be paramount.

10. This Agreement shall not release the Contractor of any liability for damage to Bell Underground Plant or property of any third party or any related personal injury arising from any excavation by the Contractor. The Contractor shall be liable for and shall indemnify and hold harmless Bell, and its Affiliates (as defined under the Business Corporations Act (Ontario)) and their respective directors, officers, employees, contractors, agents and other representatives (collectively, "Representatives") from all actions, claims, penalties, damages, losses, judgments, settlements, cost and expenses (including legal costs) arising out of or resulting from any breach of this Agreement or any act or omission or willful misconduct of the Contractor or any of its Representatives. Without limiting the generality of the foregoing, the Contractor shall be liable to pay for any costs and expenses to repair damages to any Bell Underground Plant caused directly or indirectly by excavation by the Contractor and shall pay any invoices for such costs or expenses within thirty (30) days from receipt thereof.
11. Any notice or other communication to be given under or pursuant to the provisions hereof or in any way concerning this Agreement shall be sufficiently given if reduced in writing and delivered to the person to whom such communication is to be given, or sent by facsimile transmission, or mailed to such person by prepaid mail addressed to such person at the address set out on the first page of this Agreement, or at such other address as may be specified therefor by proper notice hereunder. Any communication mailed as aforesaid shall be deemed to have been given and received on the fifth (5th) business day following the date on which it was so mailed, where such communication is sent by facsimile transmission it shall be deemed to have been given and received on the next business day following transmittal provided the facsimile is received as confirmed by the issuance of a confirmation receipt, and where such communication is personally delivered it shall be deemed to have been given and received when so delivered.
12. Unless Bell specifies otherwise in writing, the Contractor shall at its expense maintain and keep in full force and effect until this Agreement is fully performed Commercial General Liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of at least Two Million Dollars (\$2,000,000.00). Bell must be added as an additional insured in the insurance policy, which should be extended to cover Contractual liability, products/completed operations liability, owners'/Contractors' protective liability and should also contain a cross liability clause.

The Contractor shall forthwith after entering into this Agreement, and from time to time at the request of Bell, furnish to Bell a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance (all such policies of insurance being hereinafter called "Insurance Policies") maintained by the Contractor in order to satisfy the requirements of this Section 12. At any time and from time to time at the request of Bell, the Contractor shall furnish Bell with one or more duly completed insurance certificates in the form requested by Bell to evidence the details of all Insurance Policies. The Contractor shall not cancel, terminate or materially alter the terms of any of the Insurance Policies without giving prior written notice to Bell. The Contractor shall cause or arrange for any of its insurers under any one or more of the Insurance Policies to Contractually obligate itself in writing to Bell to provide fifteen (15) days prior written notice to Bell before canceling, terminating or materially altering the Insurance Policies under which it is an insurer.

13. The Contractor shall not, without the prior written consent of Bell, assign this Agreement or any rights of the Contractor under this Agreement.
14. All indemnities provided for in this Agreement shall survive the termination of this Agreement irrespective of the time of or party responsible for such termination, and all such indemnities shall remain in full force and effect and be binding on the Contractor notwithstanding such termination.
15. The Contractor acknowledges that the name "Bell", "Bell Canada." "Bell Aliant" and any names, symbols, signs, trademarks and marks denoting and identifying Bell Canada., its subsidiaries and affiliates, presently in use or acquired from time to time are the property of Bell and shall not be used or displayed by the Contractor in any manner whatsoever without the prior written authorization of Bell. The Contractor shall not use, display or utilize any name, logo, sign, symbol, trademark or mark denoting or implying a relationship or affiliation between the Contractor and Bell for any purpose other than in furtherance of the Contract Work and shall cease such usage upon completion of the Contract Work or upon request of Bell. Further, the Contractor shall return to Bell forthwith any documents, identity cards, signs, forms or records provided to it by Bell or acquired by the Contractor in furtherance of this Agreement and the Contract Work, upon completion of the Contract Work or upon the request of Bell. The Contractor acknowledges and agrees that this undertaking shall continue in effect subsequent to the termination or expiry of this Agreement.



16. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under or related to this Agreement.
17. No failure on the part of any party to this Agreement to exercise, and no delay in exercising any right, power or remedy or partial exercise of any right, power or remedy by any party will preclude any other or further exercise thereof or the exercise of any other right, power of remedy. No waiver will be binding unless executed in writing by the party to be bound thereby.
18. This Agreement, including any schedules attached hereto, constitutes the entire agreement between the parties with respect to the subject matter set out herein and replaces any prior understandings or agreements, whether written or oral, regarding such subject matter.

**See next page for Schedule 'A' Scope of work allowed for Bell**

SCHEDULE “A” TO THE ALTERNATE LOCATE AGREEMENT

Nov. 2014

| Municipal<br>Property<br>Maximum | Private<br>Property<br>Maximum | Allowable Work - means excavation meeting the following criteria<br>(Depth is measured from Original Grade)   |
|----------------------------------|--------------------------------|---|
|                                  |                                | <b>Hand Excavation:</b> includes excavation with an insulated shovel <u>only</u> without depth limitation. No picks or bars are allowed. Use of a tunneling bar is allowed to bore from one side of the sidewalk to the other immediately below the bottom of the sidewalk only after each side of the sidewalk has been exposed by hand excavation. The tunneling bar must be operated to ensure it moves from private property to public property.  |
| 0.30m                            | 0.30m                          | Ploughing and Mechanical Brushing   |
| 0.30m                            | 0.30m                          | Use of mechanical equipment only to remove concrete side walk and asphalt pavement and for stump grinding. (ALA does not include work on a Bridge, curbs and roadbed)   |
| 0.30m                            | 0.30m                          | <b>Wood and Plastic staking</b>   |
| 0.60m                            | 0.60m                          | <b>Manhole and Sewer Grates:</b><br>Hand excavation only – to a width no greater than 0.60m beyond edge of manhole or sewer grate. No picks or bars are allowed.  |
| 1.20m                            |                                | <b>Surveyors Only:</b><br>Hand excavation around existing survey monuments to a diameter no greater than 0.60m.   |
|                                  |                                | <b>Hydro Excavation is only allowed for the following types of work:</b><br><br>1. Maintenance, installation, repair and removal of existing roadside features without depth limitation. Any replacement installations must be in the same location. Any exposed Bell infrastructure must be supported adequately prior to widening the excavation.<br><br>For further clarity, refer to section #3 entitled ‘GUIDELINES FOR EXCAVATION IN THE VICINITY OF THE BELL NETWORK’.<br><br>2. The pre-engineering design for the purpose of infrastructure depth surveys in order to determine the location of existing underground utilities. The purpose is to map out existing infrastructure in order to determine the location of utilities that are presently underground within the future construction site. <u>Standard locates must be requested to facilitate the future construction work.</u><br><br>3. Slot trenching for the daylighting, or installation of underground services for example, cable, gas, water, street lighting, electrical etc. The following clearances must be maintained from the outside walls of those services to any other underground structures:<br>Horizontal - 0.6 m minimum<br>Vertical - 0.3 m minimum<br>Vertical - 0.6 m minimum for pipelines 16 inches in diameter and larger<br><br>4. Utility pole replacement inline within 2.0 m of an existing pole line excluding any dip poles and or poles with cable attached on the side travelling up/ down the pole going buried.<br><br>5. Water valve and valve case, maintenance, repair and replacement within a radius of 0.80m of an existing water box. |